

STATE OF TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION DIVISION OF WATER POLLUTION CONTROL

401 Church Street L&C Annex 6th Floor Nashville, TN 37243-1534



January 30, 2008

Gregory Richardson, Registered Agent Richardson Investments, LLC of Nashville 6373 Old Hickory Boulevard Whites Creek, Tennessee 37189

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7099 3400 0014 0970 5084

Subject:

DIRECTOR'S ORDER NO. WPC07-0271

RICHARDSON INVESTMENTS, LLC OF NASHVILLE/

5424 CLARKSVILLE PIKE

DAVIDSON COUNTY, TENNESSEE

Dear Mr. Richardson:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Patrick Parker, Manager

Enforcement and Compliance Section

PNP:BPB

cc:

DWPC – EFO-Nashville

DWPC - Compliance File

OGC

STATE OF TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)
)
)
RICHARDSON INVESTMENTS,) DIVISION OF WATER
LLC OF NASHVILLE) POLLUTION CONTROL
)
)
)
RESPONDENT) CASE NO. WPC07-0271

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

II.

Richardson Investments, LLC of Nashville (hereinafter the "Respondent") is an active limited liability company licensed to conduct business in the State of Tennessee and is the owner of a parcel of land located at 5424 Clarksville Pike (hereinafter "the site") in Davidson County. Service of process may be made on the Respondent through

EFO). Storm water runoff from the site flows into an unnamed tributary to Dry Fork Creek.

VIII.

On June 26, 2007, division personnel from the N-EFO conducted a complaint investigation at the site. It was observed that a small valley was being filled in with dirt, rock, concrete, and construction debris. Some of the fill materials were exposed on the slope leading to an unnamed tributary to Dry Fork Creek, including what appeared to be hardened cement that had been deposited on the slope while still wet. Storm water runoff and seepage from the filled area was exiting the slope an entering the unnamed tributary, depositing a whitish-brown substance in the stream channel for an approximate distance of 500 feet downstream of the discharge point at the site. It was also observed that eroded material from the unstabilized fill slope had migrated into the unnamed tributary at multiple locations. It was noted that the leachate and eroded material entering the stream from the site resulted in a condition of pollution. Following the complaint investigation, division personnel telephoned the Respondent to discuss the violations observed.

IX.

On July 13, 2007, the division issued a Notice of Violation (NOV) to the Respondent for the violations observed during the June 26, 2007, complaint investigation. The NOV instructed the Respondent to develop a plan of action or an alternative solution for site stabilization, by July 27, 2007, for review and approval by the division.

On July 26, 2007, the Respondent submitted correspondence to the division stating that he had instructed his engineer to develop a corrective action plan (CAP) for site stabilization and would submit it to the division upon completion.

XI.

On August 30, 2007, division personnel met the Respondent and the Respondent's representative at the site to observe site conditions and discuss possible corrective measures. The division noted that conditions at the site had not changed since the complaint investigation of June 26, 2007. The division showed the Respondent where the tributary had been polluted with eroded material, construction debris, and leachate. The Respondent's representative stated that he would provide his assessment and proposal for corrections at the site the following week.

XII.

On September 12, 2007, the Respondent's representative e-mailed a proposed CAP for site stabilization to the division for review. The CAP proposed a cleanup of the exposed surface of the fill slope, stabilization of the fill slope, and installation of controls to manage storm water at the site. The CAP did not address cleanup of the stream.

XIII.

On September 20, 2007, the division e-mailed the Respondent's representative approving the proposed CAP for site stabilization with the stipulation that if the leachate

problem continued after the plan had been implemented, additional work would be required.

XIV.

On December 18, 2007, the division telephoned the Respondent's representative to check on the progress of the CAP at the site. The Respondent's representative stated that, to date, no work had been done at the site.

XV.

On January 4, 2008, the division conducted a follow-up site investigation and noted that conditions at the site had not changed since the June 26, 2007, complaint investigation. The division noted that the Respondent had not implemented any corrections at the site as proposed in the CAP that the division approved on September 20, 2007.

XVI.

During the course of investigation, the division incurred DAMAGES in the amount of EIGHT HUNDRED SIXTEEN DOLLARS AND SIXTY EIGHT CENTS (\$816.68).

VIOLATIONS

XVII.

By failing to comply with the terms and conditions of the TNCGP as described herein, the Respondent has violated T.C.A. Sections §§69-3-108(b) and 69-3-114(b):

T.C.A. §69-3-108(b) states, in part:

- (b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:
 - (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
 - (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
 - (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

T.C.A. §69-3-114(b) states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

XVIII.

By causing a condition of pollution to the unnamed tributary to Dry Fork Creek, the Respondent has violated T.C.A. Section §69-3-114(a):

T.C.A. §69-3-114(a) states:

It shall be unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XIX.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondent:

- The Respondent shall, within 14 days of receipt of this ORDER, begin implementation of the previously submitted CAP approved by the division on September 20, 2007 (attached).
- 2. The Respondent shall, no later than April 30, 2008, complete all activities outlined in the CAP.
- 3. The Respondent shall, within 7 days of completing the CAP, submit written notification of completion to the division. The Respondent shall submit the written notification to the manager of the Division of Water Pollution Control at the N-EFO at 711 R.S. Gass Boulevard, Nashville, Tennessee 37243.
- 4. The Respondent shall, within 30 days of receipt of this Order, submit for review and approval a plan to assess eroded material and leachate contribution from the site to the unnamed tributary to Dry Fork Creek, and the restoration of the impacted stream and drain ways. This plan shall, at a minimum, include detailed

options for removing the eroded material and leachate deposits, where appropriate, and a time schedule to identify the proposed activities and the dates required to complete the work. The Respondent shall coordinate with the manager of the Division of Water Pollution Control prior to preparing the plan, to ensure that appropriate measures are included. This Order does not authorize access to private property. Arrangements concerning corrective activities on adjoining property, if necessary, must be settled by the Respondent with the adjoining landowner prior to commencing. The plan shall be submitted to the manager of the Division of Water Pollution Control at the N-EFO, at the respective address listed in item 3, above.

- 5. The Respondent shall, within 60 days of initiating the approved plan, complete the plan and submit written notification of completion to the division. The Respondent shall submit the written notification to the manager of Water Pollution Control in the N-EFO, at the respective address listed in item 3, above.
- 6. The Respondent shall, within 7 days of establishing the approved plan, submit written documentation and photographic evidence demonstrating that these actions have been implemented. The Respondent shall submit this written documentation and photographic evidence to the manager of Water Pollution Control at the N-EFO, at the respective address listed in item 3, above.
- 7. The Respondent is hereby assessed a CIVIL PENALTY in the amount of FORTY FIVE THOUSAND FIVE HUNDRED DOLLARS (\$45,500.00) to the division, hereby ASSESSED to be paid as follows:

- a. The Respondent shall pay FIFTEEN THOUSAND FIVE HUNDRED DOLLARS (\$15,500.00) to the division within THIRTY (30) DAYS of receipt of this Order.
- b. The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 1 above in a timely manner.
- c. The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 2 above in a timely manner.
- d. The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 3 above in a timely manner.
- e. The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 4 above in a timely manner.
- f. The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 5 above in a timely manner.
- g. The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 6 above in a timely manner.
- 8. The Respondent shall pay DAMAGES to the division in the amount of EIGHT HUNDRED SIXTEEN DOLLARS AND SIXTY EIGHT CENTS (\$816.68).

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Paul E. Davis, P.E.

Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§69-3-109, 115, allows any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this

Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L&C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 et seq. (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services-Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, at 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Please write your case number on all payments and all correspondence concerning this matter.



September 12, 2007

Joe L. Holland
Tennessee Department of Environment and Conservation
711 R. S. Gass Boulevard
Nashville, TN 37243

Gregory Richardson Richardson Investments, LLC 6373 Old Hickory Blvd Whites Creek, TN 37189

Re: TDEC Notice of Violation

5424 Clarksville Pike

Dear Mr. Holland:

I have reviewed the July 13, 2007 Notice of Violation letter you issued to Mr. Richardson. On August 30, Mr. Richardson and I met with you and Ms. Morbitt to walk the referenced site and discuss the scope of a possible remedial plan. This letter is to outline our findings and to propose a remedial action plan for the property.

During our site visit, we observed the area where fill material had been placed along the west property line of the subject property. We also walked the stream bed located immediately downstream of this area. As mentioned in your letter, we observed deposits within the stream which possibly originated from materials placed in the fill operation. The fill slopes were steep and had evidence of erosion channels within the slope. The fill material on the surface appeared to be a mixture of soil, brick, concrete, and cement.

As noted in our meeting, the property boundaries were not marked; therefore, we were not sure if the fill material in the vicinity you noted the white material scepage was actually on the subject property or if it had been placed by others on the adjoining property. The proposed remedial plan is prepared only for the subject property at 5424 Clarksville Pike.

In my opinion, the best approach to remediating the alleged contaminants is to clean up the exposed surface of the fill slope, stabilize the fill slope, and provide controls to manage the stormwater at this location. As such, I recommend the following action:

Stabilize the fill slope [2 options to be considered by the Owner] Option 1:

- Reduce the fill slope to no steeper than 2(H):1(V) slope. The current toe
 of slope shall remain where it is and the slope shall be cut out to the top of
 the hill.
- Remove surface debris from the slope and cover the slope with a 12" layer of soil material with the top 4" being topsoil.
- Install a long term erosion control blanket over the slope. Anticipate a blanket equivalent to a C150 product by North American Green.
- Vegetate the slope.

Option 2

- Cut the fill to a 1:1 slope.
- Remove surface debris from the slope and replace with a 12" soil cover and a 6" topsoil layer.
- Install a permanent turf reinforcing mat over the slope. Anticipate a TRM equivalent to a P550 or C350 from North American Green and designed for such applications.
- Vegetate the slope

Manage the stormwater:

- Create a 24-inch deep, 4-foot wide trapezoidal swale with 3:1 side slopes at the top of the slope. The center of the swale should be 18 feet from the top of the slope and the slope should slope at a 2% minimum grade. The swale will prevent water from discharging onto the slope face and causing erosion.
- Install an 18" HDPE slope drain. The pipe will take water from the swale and convey it to the bottom of the slope. The pipe can either be buried or be placed on the surface and anchored into the slope.
- Install an energy dissipater at the end of the slope drain to reduce the velocity of the water discharging at the toe of slope.

Other factors:

- Per TDEC request, there will be no planned remedial action performed within the stream. Disturbance should be limited to 20 ft beyond the toe of slope.
- This site is already covered by an NPDES permit; therefore, we understand no additional permitting will be required by the State.

See the attached sketch. If you have any questions, please call.

Sincerely.

Jini Lukens, P.E.

EROSION PREVENTION AND SEDIMENT CONTROL NOTES

- 1. COMPLY WITH ALL LOCAL AND STATE DROSSOM PREVENTION AND SECUMENT CONTROL REQUIREMENTS. EROSSOM CONTROLS TO BE IN ACCORDANCE WITH THE METRO STORMWATER MANAGEMENT MA
- 3. INSPECT EPSC MEASURES TWICE WEEKLY, MAINTAIN INSPECTION RECORDS ONSITE
- 4. MAINTAIN A 20 FOOT BY 100 FOOT, 8-DICH GRAVEL PAD AT ACCESS DRIVE
- 5. PROVIDE AN ABEA FOR CONCRETE WASH DOWN AND EQUIPMENT FUELING IN ACCORDANCE WITH METRO CP-10 AND C-13, RESPECTIVELY. COORDINATE EXACT LOCATION WITH THE METRO MPDES DEPARTMENT DURING THE PRECONSTRUCTION MEETING.

OLD HICKORY BLVD

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JANES OF 14

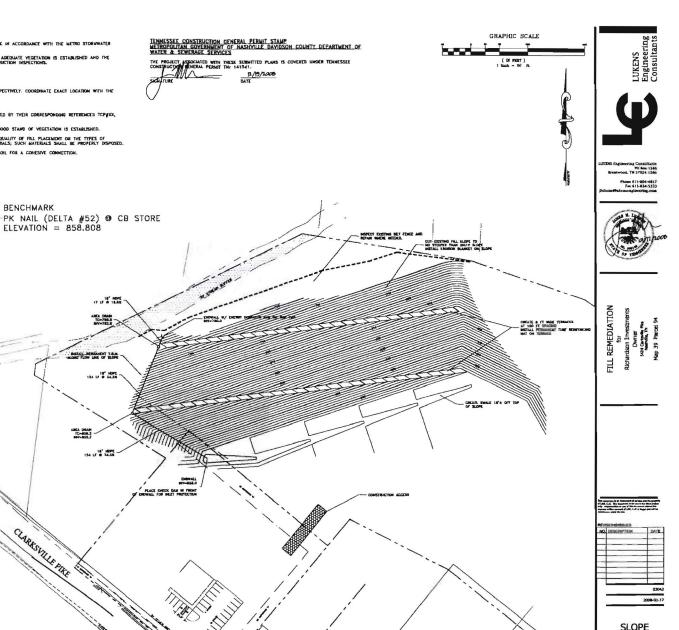
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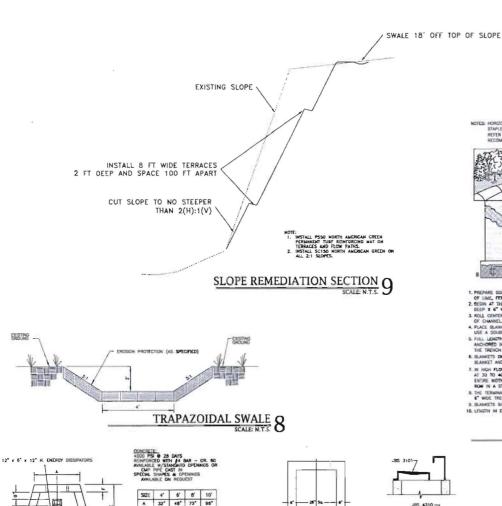
CLARKSVILLE PIKE

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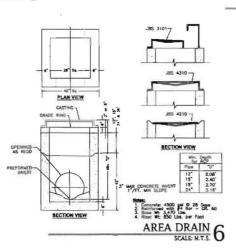
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E 24' 36' 58' 53' F NA 8' 8' 8' 8' GPS 18' 26' 40' 80' WT./# 1090 3130 5625 8575

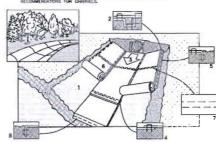
ENDWALL 7



A. OVERLAPS AND SEAMS PROJECTED WATER UNI



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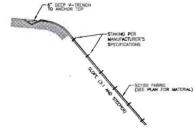
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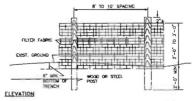
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- TO HIGH FLOW DEVANSEL APPLICATIONS, A STAPLE CHECK SLOT IS RECOMMENCED AT 30 TO 40 FOOT INTERNALS. USE A ROW OF STAPLES 4" APART OVER ENTIRE WIDTH OF THE CHARGE. PLACE A SECOND ROW 4" SILLOW THE FIRST ROW IN A STAGGERED PATTERN.
- NOW IN A STAGGERED PATTERN.

 B. THE TERMAN, END OF THE BLANKETS MUST BE ANCHORED IN A 6" DEEP X 6" WIDC TERMON BACKFUL AND COMPACT THE TRENCH AFTER STAPLING, P. BLANKETS SHALL BE NORTH ARRESTED GREEN [6"-350, 10. LENGTH IN DIRECTION 3 (AS SHOWN ABOVE) BE L = 0 X PIPE DA, MIN.

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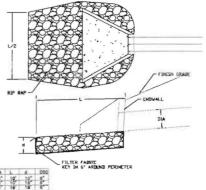


SLOPE PROTECTION SCALE N.T.S. 3



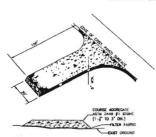


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RIP RAP PAD SCALE: N.T.S. 5





CONSTRUCTION ACCESS



Plant 515-804-4517 7ax 615-834-1333



FILL REMEDIATION for

2008-01-17

DETAILS